

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK O. FRANKLIN,

Plaintiff,

vs.

CV F 05 0520 OWW WMW P

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

HARRIS PHILLIPS, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

This action proceeds on the complaint. Plaintiff, an inmate in the custody of the California Department of Corrections at the California Correctional Institution at Tehachapi, brings this civil rights action against defendant correctional officials employed by the Department of Corrections at Tehachapi.

Plaintiff sets forth two claims in the complaint. Plaintiff claims that the clothing distributed to him did not fit. The shoes are too tight, and the clothing is used. Plaintiff also claims that defendant Phillips tore up Plaintiff's laundry receipt.

To warrant relief under the Civil Rights Act, a plaintiff must allege and show that defendant's acts or omissions caused the deprivation of his constitutionally protected rights.

1 Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993). In order to state a claim under § 1983, a
2 plaintiff must allege that: (1) a person was acting under color of state law at the time the
3 complained of act was committed; and (2) that person's conduct deprived plaintiff of rights,
4 privileges or immunities secured by the Constitution or laws of the United States. Paratt
5 v. Taylor, 451 U.S. 527, 535 (1981).

6 The statute under which this action proceeds plainly requires that there be an
7 actual connection or link between the actions of the defendants and the deprivation alleged to
8 have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658
9 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that "[a] person
10 'subjects' another to the deprivation of a constitutional right, within the meaning of section 1983,
11 if he does an affirmative act, participates in another's affirmative acts or omits to perform an act
12 which he is legally required to do that causes the deprivation of which the complaint is made."
13 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 The court finds that the allegations in plaintiff's complaint fail to state a claim for
15 relief. There is no legal precedent or authority holding that inmates have a protected interest in
16 new prison clothes. As to Plaintiff's claim regarding the loss of any laundry, because
17 California has an adequate post-deprivation remedy, Clark has no cognizable claim under §
18 1983 for the negligent or intentional deprivation of his property. See Barnett v. Centoni, 31 F.3d
19 813, 816-17 (9th Cir.1994). Because Plaintiff fails to state a claim for relief, the complaint
20 must be dismissed. The court will, however, grant leave to file an amended complaint.

21 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
22 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
23 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
24 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
25 there is some affirmative link or connection between a defendant's actions and the claimed
26

1 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
2 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

3 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
4 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
5 amended complaint be complete in itself without reference to any prior pleading. This is
6 because, as a general rule, an amended complaint supersedes the original complaint. See Loux
7 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
8 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
9 original complaint, each claim and the involvement of each defendant must be sufficiently
10 alleged.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Plaintiff's complaint is dismissed; and

13 2. Plaintiff is granted thirty days from the date of service of this order to file a
14 first amended complaint that complies with the requirements of the Civil Rights Act, the Federal
15 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
16 docket number assigned this case and must be labeled "First Amended Complaint." Failure to
17 file an amended complaint in accordance with this order will result in a recommendation that this
18 action be dismissed.

19
20 IT IS SO ORDERED.

21 **Dated: December 26, 2006**
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE